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PILGRIM TO NOWHERE— THE MYSTERIOUS JOURNEY OF ROBERT RODES

*Emily Albrink Hartigan**

Robert Rodes settled on the metaphor of the pilgrim for his story of the law. For him, pilgrim law is “the jurisprudential manifestation of liberation theology.”¹ To begin my discussion of Rodes and the ongoing story of the law, I begin with a tale of my own pilgrimage to find justice in one place in the world I thought most needed it—when, as Dorothy could have told us from the outset, if it was not in my own back yard, I had never really lost it to begin with. In the mysteries of a Christian life that Rodes emphasizes is rooted in our unknowing, Milovan Djilas figures as central to Rodes’s analysis;² Djilas himself gave me crucial, but slightly cryptic, wisdom for my journey. Thus I feel haunted by some of the same characters and stories Rodes deems crucial in his pilgrim experience.

In the summer of 1968, I set out on my post-college backpacking trip through Europe with a distinctive itinerary, unable to find among the Swarthmore group that went over together anyone else who wanted to go to Eastern Europe. In 1968, I was intoxicated by the Prague Spring even as I mourned RFK and MLK and the tragedy of the Vietnam war. Still somewhat caught in the Cold War mentality, I saw “socialism with a human face” as heady and creative, liberating a people with a rich history from the evils of Soviet Communist domination. On my way to Czechoslovakia, I visited Belgrade, then the capital of Yugoslavia. In a student dorm where I was a novelty, a Yugoslav student proclaimed that her English professor at Belgrade University would insist on seeing me. Thus I met Felicia Markovic, a friend of Michael Petrovich, who was at the University of Wisconsin where I was about to begin my doctoral work. Professor Markovic was an extraordinary hostess, cooking me

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1. Robert E. Rodes, Jr., *Pilgrim Law* 175 (U. Notre Dame Press 1998).

2. Rodes notes in the “Preface” that a “Christian interested in social justice has to find some way to appropriate the important insights of Marx and Engels [and, in my opinion, Djilas] into class dialectic without absolutizing class as Marx and Engels do.” *Id.* at xv.

special Yugoslavian dishes, engaging in sophisticated political discussions, and, when I mentioned my great admiration of Djilas, recently released from prison by Tito, she offered to take me to visit him. This opening to reality in the universe of my complex philosophical-political romance with dissidence "behind the Iron Curtain" and the people whose intellectual lives wove in and out of incarceration and risk of exile, was more revelatory than I imagined. Later that day, we sat in Milovan Djilas's apartment, listening to him describe his meeting with Dimitri Shostakovich on a Black Sea beach and talking about politics. I was mainly content just to listen to whatever he had to say. Yet at one point I felt compelled to tell him how exemplary I found his willingness to write the incisive critiques that led him to jail, and to praise his dedication to truth in the face of tyranny. Smiling, and then pointing to the walls and then to his ear, he said softly, slowly and pointedly, "You give yourself away."

That clear, ironic enunciation of the cluelessness of a Western college kid still rings with kindness in my memory—and with continuing, revelatory insight. I still tend to give myself away too easily, too often speaking what I am led to see as truth with less regard for the pragmatic subtleties of the situation than I should. Despite having been literally bowled over earlier that epochal year of 1968 by the line in *A Man for all Seasons* in which Thomas More tells his daughter that "our natural business lies in escaping"³ (and so he will take the oath if he can), I had not begun to integrate into my life what such a dispensation means. And it is just such kindness and resolute insight, engaged by both a total commitment and a dispensation for our humanness, that I find in Rodes's notion of *Pilgrim Law*.

The central insight that Rodes takes from Milovan Djilas is that class will always count, but count in a nuanced way that Djilas's self-aware and trenchant analysis revealed amid the reality of the theoretically "classless" societies of Soviet (and Yugoslav) socialism. Djilas's two books, *Conversations with Stalin*⁴ and *The New Class*,⁵ chronicle the unraveling of Djilas's fidelity to state socialism as he began to perceive the confluence of the inevitability of the non-ideal practice of communist theory, and that particular non-ideal ideologue, Josef Stalin. Thus, the observational skills and the critical acumen evident in Djilas's books benefit from the personal-psychological-

3. Robert Bolt, *A Man for All Seasons* 126 (Vintage Intl. 1990).

4. Milovan Djilas, *Conversations with Stalin* (Michael B. Petrovich trans., Harcourt, Brace & World 1962).

5. Milovan Djilas, *The New Class: An Analysis of the Communist System* (Praeger 1957).

political reading he made of Stalin, as well as his astute narrative of the unfolding of the consequences of the all-too-human administration of Marx-Engels-Lenin in practice. Djilas crafts a meta-“class” analysis from his concern that justice ferret out how theory is actually performed; this empirical insight is what Rodes finds crucial to his *Pilgrim Law* advocacy based on the preferential option for the poor. In its simplest formulation, Rodes’s argument is that we need to prefer the poor because, without being fully conscious of it, we otherwise only tend to prefer ourselves.⁶ Djilas chronicles the political history of that conundrum in the inevitable re-“class”ification in “classless” societies.

The preferential option for the poor offers a reflective mechanism that may forestall the inevitable drift toward protection of our class privilege which frames the basic “conflict of interest” of any member of a ruling class. The fact that the ruling class in Soviet terms was only *nominally* the proletariat is immediately unmasked, as the street sweepers do not become the commissars—someone who has some expertise must be making some of the major decisions, Rodes argues,⁷ and such decision-makers will always, in their humanity, tilt toward their own interests.

What Rodes has chosen for his journey/metaphor legal ideal is a combination of a complex conscious commitment to the self-binding preference for the worldly Other, and a resolute Christian choice for the ultimate Unknown Other. His living paradox of sophisticated intellectual-moral-political insight and mysterious faith should unsettle any reader of this book. The author manifests his prodigious learning and ease within the labyrinthine doctrines and history of the Church while always explaining, in the end, why such learning cannot be the final basis of pilgrim law. “The foundation of Christian jurisprudence, then, is the understanding that we are called to pursue an unknown end by inefficacious means.”⁸ Because so much of the enterprise of justice-seeking is “radically unknowable,”⁹ Christians must rely on the conviction that the reign of God “is already present, in mystery.”¹⁰ The overtly faith-based nature of Rodes’s pilgrim law is the very cognate of faith: proclaiming our fallibility, Rodes calls us to embrace that most unEnlightened of epistemic categories, mystery. I suggest that here

6. See Rodes, *supra* n. 1, at 103 (“The only way to avoid an inadvertent bias in our own favor is to adopt a deliberate bias the other way.”).

7. *Id.* at 105.

8. *Id.* at 11.

9. *Id.*

10. Second Vatican Council, *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World* § 39, at 35 (Nat'l. Cath. Welfare Conf. 1965).

Rodes's confession brings the intellectual political or legal theorist back home, back to Plato's insistence that true wisdom is to know that you do not know. From this wisdom, openly woven into the text, philosophy and all love of knowledge and wisdom begins. In this sense, as in many others, Rodes is a lover.

Thus, it is fitting that the difficulties of his text should start with the problems of lovers; to fill the space that all true texts leave for other threads, new strands, Rodes's undertaking needs a particular, dangerous strand that could call pilgrim law to prophetic newness. Before pilgrim law could be widely embraced, it would need to penetrate contemporary U.S. consciousness in a way that mainstream political theory has long resisted; for Rodes's basic analysis, using a category reviled by those in the U.S. unable to face the reality of class privilege, moves on the basis of *class analysis* and *false consciousness*. These terms reek of Marxism, as his analysis suggests socialism, another forbidden concept. Rodes distinguishes his sense of false consciousness from the classic Marxist notion, but even with its mutation into the "managerial" rather than merely capitalist class, his idea of class is still considered an insult to the U.S. by most people. Thus, to get to the idea of false consciousness he wants to unfold, Rodes would have to face our contemporary denial of class realities first. For an electorate that supported the ending of inheritance tax, something that benefits only its richest citizens, to "see" class and its momentum toward privilege will not be easy. And crucial aspects of revealing class will continue to be problematic, for his "lovers' problems" are precisely the very "value" issues that have persisted in pulling voters away from recognizing the self-interest of that elite two percent so well served by the Bush administration. Rodes posits the cause of our false consciousness as a failure to embrace "values" that are transcendent or ultimate. Rodes himself names "family values" as central,¹¹ yet they have become the very tools to defeat concern for the poor, even by the voting poor.

Thus, Rodes has not reconciled the multiple transcendent values he holds, and he embeds himself as part of the very paradox he must try to illuminate: Voters will continue to elect elites who are not accountable for economic justice so long as they can be bought off by promises of conservative transcendent values. Voters will say, as they did about the 2004 election, that defending traditional marriage is more important than their class interests. "Patriotism" trumps the insights into war profiteering that the electorate refuses to credit when galvanized by a

11. Rodes, *supra* n. 1, at 92.

Reichstag fire or 9/11. Rodes himself accepts that class divisions are not necessarily unjust “as long as those who have the least have as much as is required for a fully human existence,”¹² seemingly ignoring the persistent tropism of the ruling class toward dominance that he later emphasizes. Yet even such a watery a version of class has become distorted in contemporary politics by the manipulation of exactly the transcendent hopes that Rodes values. The demons with whom Rodes has been tilting overtly—self-concerned managers and Critical Legal Studies scholars—continue on their way, while the U.S. electorate chooses what it somehow thinks Jesus would do. The alleged nihilism of CLS, now a largely dormant intellectual movement, is in reality irrelevant to the actual workings of power, except as a scapegoat (as Anne Coulter recently said, “no Christian can be a Democrat”; as women in my suburban parish emailed wildly, I could not be a “serious Catholic” and vote for Kerry).

Thus, we must examine Rodes, with his professed (and genuine) humility about knowing, and see if he can help us with the conundrum of why the option for the poor fares so, well, poorly among those who profess belief in the very “fundamental” values he urges.

Rodes has distinguished his sense of false consciousness from the Marxist version by constructing a model of consciousness that, unlike Marxism, has a place for “moral judgments that transcend class,”¹³ but he has assumed that transcendent values will somehow be what he would consider correct values. He recognizes that an ecclesiology that focuses on personal conversion can “be drawn on to give an unearned transcendence to the capitalist ruling class”¹⁴ but does not envision that we might move into the distorted “politics of transcendence” that the Moral Majority presaged. Crucially, he has left no room in human fallibility for the *deliberate manipulation of transcendent values*. Because he does not want to accept the Marxists’ total evacuation of true moral content from asserted values and their reduction of all ideology to cynical class interests by the dominant class, he ignores the quite conscious machinations of political strategists. He has faith that the beneficiaries of a system “have a stake in replacing it with true values just as the victims do”¹⁵ but he has underestimated the value-hypocrisy of politicians at work. President Bush’s advisors sent out a gay-marriage-amendment blitz just as dissatisfaction with the war in Iraq had

12. *Id.* at 24.

13. *Id.* at 88.

14. *Id.* at 157.

15. *Id.* at 89.

peaked. The dynamics that the late Murray Edelman labeled the “politics of misinformation”¹⁶ (even before the Bush administration set up its office of disinformation) show that those who benefit from the system have read Marx also, and have learned to treat Rodes’s transcendent values with intentional bad consciousness, forming false consciousness with premeditation. Rodes ignores the key artifact of capitalism—advertising—that is crafted precisely to bend consciousness to the needs of profit-(and vote-) seekers.

Why do voters who are predominantly less well-educated and less wealthy (that is, “lower class”) vote so strongly based on arguably non-political “values” at a time when the rich are redistributing wealth upwards? Surely, it must have something to do with despair, with a lack of confidence in their own true value. They are making the choice for transcendence Rodes most wants, and doing so on patently religious bases. Have they unconsciously conflated the Invisible Hand of the market with the only One who might indeed have such a powerful invisible hand? Have they internalized the fallacy as old as the Gospels—that we have gotten what we earned—and, as the losers in the capitalist competition, introjected their “loser” status? If so, their “failing” is as basic as the core value Rodes affirms: they have not really believed that they are God’s beloved children, of incomparable and equal value. The preferential option for the poor starts at home—until we love ourselves, we cannot love others. And the poor are notoriously low on self-love, given the many negative signals that society sends them, and a capitalist society most of all.

Thus the values that the poor can affirm in the current political milieu are based on condemnation of the other, and this is the fertile ground of things like gay-bashing. Values that are manufactured by the intense Congressional rhetoric of condemnation become the fulcrum for holding the electorate in line so that they do not hold the elected accountable for the real functions of governance, much less their self-serving policies. (Though, there is some hope that hypocrisy and pork-barreling have electoral limits, given the 2006 elections.) Perhaps Rodes has underestimated the motives that led to the first murder: competition and envy. Cain was so threatened by Abel’s acceptance by Yahweh that he killed him in order to be the only acceptable son. To me, the false consciousness behind fratricide is our inability to believe that God loves us, in our wealth as well as our poverty, and thus that there is

16. Murray Edelman, *The Politics of Misinformation* (Cambridge U. Press 2001).

unimaginable abundance and love.¹⁷

The promise of this love is that we can see God's face here and now, and the Gospel gives us a direct map: Christ may be seen directly in the "least of these" who, in *Matthew* 25, have received from us food and shelter and clothing and visits in prison. The preferential option for the poor is a doorway to direct visions of the Christ within each of us, and particularly in the Other.

Yet that vision of Christ must first be available to us as selves. Thus, John's Gospel tells us that love consists in God's loving us first, not in our love, which can only be a response to being loved.¹⁸ So we must prefer what we most want to hide, the poor in ourselves. Our poverty may consist in guilt over not giving enough to those in material need, in our fear and thus insecurity, in our lack of self-love and thus competition. The envy and competition Rodes underestimates are, in my view, the result of our not appreciating God's infinite love for us.

Rodes makes deft and powerful arguments for pilgrim law and the option for the poor, and in this he is too rare among legal commentators. Yet his reverence and faith seem at times to stop one level of analysis too short, catching on certain moral teachings about sex and reproduction, rather than on the pervasive, unaccountable love underlying these. We benefit from preferring the poor because we are one with them in the Communion of the Saints, because we dwell with them in love, because God is particularly close to the sinner and the needy ones.

Still, Rodes sees clearly something that is in a paradoxical way co-equal with love: the mystery of God. This is radical indeed in such learned discourse. The commitment to mystery extends to the authority of the Church, so that Rodes concludes that the teachings of the church on social justice and law are constrained by the tensions inherent between authority and specificity: such teachings "can be articulated either in generalities and platitudes of high authority or in specific proposals open to serious debate."¹⁹ That is, the church can condemn the moral tragedies of theft, oppression, corruption or abortion, but cannot issue specific directives to the concrete political systems whose complexity resists any "automatic" application of such "universal"

17. See James Alison, *Raising Abel: The Recovery of the Eschatological Imagination* (Crossroad Publ. 1996).

18. At the very end of the book, Rodes notes this primacy of God's love for us, and this undoubtedly animates much of his reflection, but it is not visible in the body of his analysis. Rodes, *supra* n. 1, at 177 ("Our service to our neighbors is less an implementation of God's love for them than a response to God's love for us.").

19. *Id.* at 163.

doctrine. This humility on behalf of religious authority is crucial to an understanding of how religion can participate in politics, and to how one can function in a church Rodes himself describes as “managerial” because it is a human, bureaucratic institution.²⁰

As Rodes began with a profession that, as a Christian, he was called to pursue an unknown end²¹ by inefficacious means, he would not expect his book to get it all “right,” or to be finally authoritative. But he recognizes and at times ventures into the power that the Appalachian bishops crafted in their pastoral letter *This Land is Home to Me*, by using free verse interspersed with scripture.²² Rodes dares the poetic from time to time, operates in mystery, and hopes for justice. His is a pilgrimage we may read to our intense spiritual, temporal, legal and intellectual profit.

20. *Id.* at 146.

21. The use of “nowhere” in the title of this piece is insufficient to this unknowing, but the use of a term that would be much more nearly evocative of this, *chora*, would require too much discussion of that term, particularly as its use in Plato unfolds in the play and delicate irony of Jacques Derrida. Jacques Derrida & Peter Eisenman, *Chora L Works* (Monacelli Press 1997).

22. See e.g. *id.* at 176-177.